WP(C) 4748/2007
BEFORE
HON'BLE JUSTICE B. K. SHARMA

JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. S.S. Dey, learned counsel for the petitioner as well as Mr. L. P. Sharma, learned Standing Counsel, Gauhati University.

2. The petitioner, by means of this writ petition has prayed for a direction to the respondents, i.e. Gauhati University for re-evaluation of the answer script (6th Paper) pertaining to Environmental Law in LLB final examination, 2006. She appeared in the said examination results of which have been declared in 21.07.07. Although she has secured pass marks in all the subjects, but she having secured only 27 marks in the said paper, she has been declared failed. It will be pertinent to mention here that she was awarded 33 marks in 4th paper, i.e. C.P.C. and Limitation Act. However, on the basis of request made by the petitioner for re-scrutiny of the answer script, the University authority by Annexure-7 letter dated 30.08.07 directed the petitioner to submit the original mark sheet for necessary correction. It is the case of the petitioner that the University authority has found certain errors in 4th paper and same has been corrected. It is submitted by Mr. Dey, learned counsel for the petitioner that since upon re-scrutiny the petitioner has cleared the 4th paper, she does not have any grievance in respect of the said paper. However, the grievance of the petitioner subsists in respect of the 6th paper, since upon re-scrutiny, there is no change in the total marks which is 27.

3. Mr. L.P. Sharma, learned S.C., G.U. was requested to produce the answer script pertaining to 6th paper. He has produced the same and this Court had the occasion to go through the same with the assistance of the learned counsel for the parties. The petitioner has been awarded '0' (zero) marks in the answers to the questions No. 3 and 5 (d). Further according to the petitioner, she has been awarded marks in question No. 6 only partially.

4. It is the case of the petitioner that had the evaluation been correct with due application of mind, the petitioner surely would have cleared the examination having secured pass marks in the said paper.

5. This Court by order dated 28.09.07 upon reference to the affidavit in opposition filed by the Controller of Examination, requested Mr. L.P. Sharma, S.C., G.U., as to whether the particular examiner who had examined the paper has any special knowledge in the subject and as to whether he has experience of examining answer script.

6. In response to the aforesaid query, Mr. Sharma has been furnished with the instruction by letter dated 29.09.07. The relevant portion of the letter is quoted below:

Regarding the examiner of the paper of Environmental Law of the petitioner, I am to state that in the undergraduate Courses we do not look for experts as examiners as all the subjects taught in that level are general nature. In LL.B Examinations even advocates having LL.B Degree are encrusted with the evaluation of answer scripts. As the name of the examiner figured in the examiners' list approved by the Faculty we asked for his consent for examining the particular packet of answerscripts and only on receipt of his consent the packet was sent to him. Further, we appoint one Head Examiner to judge the fairness of the examiner's marking patter and marks given by the examiner is accepted only when this is cleared by the Head Examiner. In the instant case, the Head Examiner cleared the marks given by the examiner after proper scrutiny. The examiner in question has earlier experience of examining answerscripts of LL.B examination. Whether he has experience in examining the paper of Environmental law could not be ascertained, but in 2005 Examination he did not examine Environmental law.

7. As stated above, this Court had the occasion to go through the answer sc ript with the assistance of the learned counsel for the parties. On perusal of t he answer script, what has transpired is that the petitioner answered the afores aid questions at some length. In the answers, apparently she tried to meet the questions. It is another thing to say that the answers are not to the expectatio n, but it is altogether another thing to say that she does not deserve any mark s. It is in the aforesaid context, learned counsel for the petitioner has submit ted that it is a fit case for re-evaluation of the answer script.

8. In the case of President, Board of Secondary Education, Orissa vs. D. Su vankar reported in (2007) 1 SCC 603 , the Apex Court in somewhat similar circums tance observed that the authority is to ensure that anomalous situation does n ot occur. It was also emphasized that steps should be taken for assessing the c apacity of a teacher before he is appointed as an examiner. Accordingly, the dir ection was issued to constitute a body of experts regarding appointment of exami ners. While emphasizing that the scope of writ Court in interfering the matter o f evaluation of answer script is very limited, but for the compelling reasons i ndicated in the judgment, the Apex Court upheld the direction of the High Court to pay Rs. 20,000/- and observed thus:

6. Award of marks by an examiner is to be fair, and considering the fact that r e-evaluation is not permissible under the statute, the examiner has to be carefu l, cautious and has a duty to ensure that the answers are properly evaluated. No element of chance or luck should be introduced. An examination is a stepping st one on career advancement of a student. Absence of a provision for re-evaluation cannot be a shield for the examiner to arbitrarily evaluate the answer script. That would be against the very concept for which re-evaluation is impermissible.

8. It has been ensured that the examiners who make the evaluation of answer papers are really equipped for the job. The paramount consideration in such cas es is the ability of the examiner. The Board has bounden duty to select such per sons as examiners who have the capacity, capability to make evaluation and they should really be equipped for the job. Otherwise, the very purpose of evaluation of answer papers would be frustrated. Nothing should be left to show even an ap prehension about lack of fair assessment. It is true that evaluation of two pers ons cannot be equal on golden scales, but wide variation would affect credibilit y of the system of evaluation. If for the same answer one candidate gets higher marks than another that would be arbitrary. As indicated above, the scope for in terference in matters of evaluation of answer papers is very limited. For compe lling reasons and apparent infirmity in evaluation, the court step in . Care sho uld be taken to see that the examiners who have been appointed for a particular subject belong to the same faculty. It would be a mockery of the system of evalu ation if a teacher belonging to Arts stream is asked to evaluate answer papers o f Science stream. It may be that a teacher had Physics, Chemistry or biology at the intermediate level, but at graduation stage he had special paper in Zoology. To ask such a teacher to evaluate Botany paper would not be proper. Similarly i n the case of a teacher having Mathematics at intermediate level while he took h is higher studies in Physics, or Chemistry, or Botany at the graduation level, e valuation of answer paper of Mathematics by him would not be proper. May be that he has working knowledge of the subject. But the evaluation shold be done by an examiner who is well equipped in the subject. That would rule out the chance of variation or improper evaluation. Board authorities should ensure that anomalou s situations as pointed out above do not occur. Additional steps should be taken for assessing the capacity of a teacher before he is appointed as an examiner. For this purpose, the Board may constitute a body of experts to interview the pe rsons who intend to be appointed as examiners. This process is certainly time-co nsuming but it would further the ends for which the examinations are held. The C hief Examiner is supposed to act as a safety valve in the matter of proper asses sment .

9. Since there is prima facie case in favour of the petitioner, I am of the considered opinion that the aforesaid answer script should be re-evaluated by another examiner/teacher who is expert in the subject of Environmental Law. This shall be done as expeditiously as possible, not later than 10.10.07. Whatever may be the outcome of such re-evaluation, same shall be communicated to the petitioner.

10. With the above direction, writ petition is disposed of. The petitioner may obtain the certified copy of this order and produce the same before the University authority for necessary follow up action as per the direction contained in this order